

Notice of Allowability

Application No.

09/609,016

Examiner

Steven L. Weinstein

Applicant(s)

MILANI ET AL.

Art Unit

1761

-- **Th MAILING DATE of this communication appears on the cover sheet with the corresponding address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed 11/11/04.
2. ☒ The allowed claim(s) is/are 1-5, 30, 31, 6, 34, 7-10, 33, 11-13, 18-21, 23, 69, 22, 24-29, 32, 36, 37, 66-68, 71, 75-77, 14, 16, 17, 72-74, 38, 40, 43, 70, 78, 80-82, 60, 63, 64, and 79 which have been renumbered as claims 1-57, respectively.
3. ☒ The drawings filed on 11/7/02 including the replacement fig^{as} are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/5/02
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 12/6/04
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761

EXAMINER'S AMENDMENT

Claims 1,3,4,5,14,18,22,25,28,29,36,37,38,40,60,63,70,71,72,73, and 74 have been amended as shown below and replace previously presented claims

1,3,4,5,14,18,22,25,28,29,36,37,38,40,60,63,70,71,72,73, and 74, respectively:

1. (Currently Amended) A hot-fill process using a vertical form and fill machine for continuously preparing packaged, composite, cohesive food portions comprising at least nut butter and jelly wrapped in a flexible film, the process comprising the steps of:
 - (a) simultaneously and separately pumping the nut butter and jelly to an extrusion location;
 - (b) simultaneously and separately extruding the nut butter and jelly and longitudinally enclosing the extruded nut butter and jelly in a tubular web of the flexible film in the vertical form and fill machine, wherein sugar syrup is added to the nut butter just prior to extruding the nut butter and jelly;
 - (c) combining the nut butter and jelly into composite predetermined food portions using a portion control method that varies an extrusion speed based on an amount of the nut butter and jelly present, wherein the nut butter and jelly within the predetermined food portions are in physical contact with each other; and
 - (d) sealing the composite predetermined food portions within the flexible film, wherein a differential water activity of the nut butter and the jelly within the flexible film is less than about 0.5, and wherein the nut butter and jelly maintain their individual product identity in the flexible film and are cohesive and manually removeable as a composite from the flexible film.
3. (Currently amended) The process of Claim 1, wherein the composite predetermined food portions comprise food slices which are sufficiently cohesive to permit manual removal of the food slices from the sealed wrapper while retaining textural and shape characteristics of the slices.
4. (Currently amended) The process of Claim 1, wherein the composite predetermined food portions are hermetically sealed within their wrappers.

Art Unit: 1761

5. (Currently amended) The process of claim 1 further comprising forming slices after sealing the composite predetermined food portions.

14. (Currently Amended) A hot fill process using a vertical form and fill machine for continuously preparing a packaged, composite food portion comprising at least nut butter and jelly wrapped in a flexible film, the process comprising the steps of:

(a) simultaneously and separately pumping the nut butter and jelly to an extrusion location, and simultaneously and separately extruding nut butter and jelly through two or more generally planar-shaped extrusion nozzles and combining them into a composite food portion, wherein the nut butter and jelly within the composite food portion retain their individual product identity, and wherein sugar syrup is added to the nut butter just prior to extrusion;

(b) longitudinally wrapping the food portion in a tubular web of the flexible film using the vertical form and fill machine;

(c) forming the tubular web and the composite food portion into a slice shaped body using one or more flattening devices;

(d) briefly maintaining separation of the nut butter and jelly following extrusion and prior to forming the tubular web into the slice shaped body using one or more divider plates; and

(e) sealing the slice shaped body within the flexible film such that the nut butter and jelly are in physical contact with each other to provide a laminate food slice, wherein differential water activity of the nut butter and the jelly within the laminate food slice is less than about 0.5, and wherein the nut butter and the jelly maintain their individual product identity and are sufficiently cohesive to permit manual removal of the laminate food slice from the wrapper while substantially retaining textural and shape characteristics of the laminate food slice.

18. (Currently amended) The process of Claim 1, wherein sealing the composite predetermined food portions comprises forming food slices which are continuously sealed and wrapped at a rate in excess of 300 slices/minute at a single-lane machine.

22. (Currently amended) The process of Claim 1, wherein using a portion control method comprises maintaining the amounts of the nut butter and jelly within the composite predetermined food portion within predetermined ratios.

Art Unit: 1761

25. (Currently amended) The process of Claim 1, wherein combining the nut butter and jelly comprises orienting the nut butter and jelly in an alternating, generally stripe shaped pattern within the composite predetermined food portions.

28. (Currently amended) The process of Claim 1, wherein sealing the composite predetermined food portions comprises forming food portions having a refrigerated shelf life of greater than about six months.

29. (Currently amended) The process of Claim 1, further comprising the step of cooling the composite predetermined food portions following extrusion.

36. (Currently amended) The process of Claim 1, wherein sealing the composite predetermined food portions comprises forming wrapped food portions in which one of the nut butter or jelly completely surrounds the other within the wrapped food portion.

37. (Currently amended) The process of Claim 1, wherein combining the nut butter and jelly into composite predetermined food portions comprises forming food portions that are consumable immediately following extrusion.

38. (currently amended) A fluid fill process using a vertical form and fill machine for continuously preparing and packaging composite food portions comprising at least nut butter and jelly wrapped in a flexible film, the process comprising the steps of:

(a) heating at least one of the nut butter and jelly to a soft, molten mass while maintaining at least one of the nut butter and jelly in a liquid state;

(b) separately pumping each of the nut butter and jelly to an extrusion location;

(c) adding sugar syrup to the nut butter just prior to extrusion;

(d) extruding the nut butter and jelly and combining them into a composite food portion using a portion control method that varies an extrusion speed based on an amount of the food portion present, wherein the nut butter and jelly are in physical contact with each other yet maintain their individual product identity;

(e) enclosing the nut butter and jelly composite food portion within the flexible film using the vertical form and fill machine; and

(f) hermetically sealing the nut butter and jelly within a package of the flexible film having hermetic longitudinal seals and a hermetic cross-seal, wherein the differential water activity of the nut butter and the jelly within the package is less than about 0.5 and the nut butter and the jelly are cohesive and manually removable from the package as a composite.

Art Unit: 1761

40. (Currently Amended) A process using a vertical form and fill machine for continuously preparing and packaging nut butter and jelly in a flexible film, the process comprising the steps of

- (a) separately heating and mixing each of the nut butter and jelly into liquefied mixtures, and adding sugar syrup to the nut butter;
- (b) separately delivering each of the liquefied nut butter and jelly to an extrusion location;
- (c) coextruding the nut butter and jelly so that each is combined into a predetermined, composite food portion using the vertical form and fill machine in which the nut butter and jelly are in physical contact with each other, using a portion control method that varies an extrusion speed based on an amount of the food portion present, while permitting the nut butter and jelly within the food portion to maintain their individual product identity, wherein the sugar syrup is added to the nut butter just prior to extrusion;
- (d) converting the food portion into generally slice-shaped food slices, wherein the food slices are sufficiently cohesive to permit manual removal of the food slices from the flexible film while substantially retaining their textural and shape characteristics of the composite food portion;
- (e) wrapping the food slices within the flexible film; and
- (f) sealing the food slices within the flexible film,

wherein a differential water activity of the nut butter and the jelly within the flexible film is less than about 0.5 and the food slices are cohesive and manually removable from the flexible film as the composite food portion.

60. (Currently Amended) A fluid fill process using a vertical form and fill machine for continuously preparing a composite food portion comprising nut butter and jelly in a flexible film, wherein the nut butter and jelly maintain their individual product identity, the process comprising the steps of:

- (a) preparing the nut butter and jelly;
- (b) separately delivering the nut butter and jelly to an extrusion location;
- (c) continuously coextruding the nut butter and jelly and combining them into a predetermined amount to form the composite food portion using a portion control method that varies the extrusion speed based on an amount of the composite food portion present, while permitting the nut butter and jelly within the composite food portion to maintain their individual product identity,

wherein the sugar syrup is added to the nut butter just prior to extruding the nut butter and jelly;

Art Unit: 1761

- (d) briefly maintaining separation of the nut butter and jelly following extrusion using one or more divider plates; and
- (e) enclosing the composite food portion using the vertical form and fill machine, such that the nut butter and jelly are in physical contact with each other within the flexible film, wherein a differential water activity of the nut butter and the jelly within the tubular web flexible film is less than about 0.5; and
- (f) sealing the composite food portion within the flexible film, wherein the composite food portion is cohesive and manually removable from the flexible film as the composite food portion.

63. (currently amended) A fluid fill process using a vertical form and fill machine for continuously preparing composite food slices comprising nut butter and jelly wrapped in a flexible film, the process comprising the steps of:

- (a) separately preparing each of the nut butter and jelly into fluidic mixtures;
- (b) delivering the fluidic mixture of heated nut butter and jelly to an extrusion location;
- (c) continuously coextruding the nut butter and jelly;
- (e) adding sugar syrup to the nut butter just prior to the coextrusion step;
- (f) using the vertical form and fill machine, simultaneously filling the coextruded nut butter and jelly within a tubular web of the flexible film to form a composite food portion, forming the tubular web into a slice-shaped form, and longitudinally sealing the tubular web using one or more longitudinal sealing bars to form a hermetic longitudinal seal;
- (g) sealing the tubular web at cross sealing locations to form hermetic cross seals, wherein differential water activity of the nut butter and the jelly within the tubular web is less than about 0.5; and
- (h) cooling the tubular web either before or after cross-sealing of the tubular web to thereby provide hermetically sealed food slices wrapped and hermetically sealed within the flexible film, wherein the nut butter and jelly within the composite food slices maintain their individual product identity and are cohesive and manually removable from the flexible film as composite slices.

70. (currently amended) The process of Claim 40, further comprising the step of adding sugar syrup to the nut butter prior to the extruding step but after substantial mixing has occurred.

Art Unit: 1761

71. (currently amended) The process of Claim 1, wherein using a portion control method comprises adjusting the relative amount of the nut butter and jelly within the composite food portion.

72. (currently amended) The process of Claim 14, wherein combining the nut butter and jelly into a composite food portion further comprising using a portion control method to vary an extrusion speed based on an amount of the food portion present.

73. (currently amended) The process of Claim 72, wherein using a portion control method comprises adjusting the relative amount of the nut butter and jelly within the composite food portion.

74. (currently amended) The process of Claim 73, wherein using one or more divider plates comprises moving at least one of the one or more divider plates to permit an adjustment in the relative amount of the nut butter and jelly within the composite food portion.

The title has been changed to read - - Method For Packaging A Composite Food Portion --;

Claims 44-59 have been cancelled.

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761

Art Unit: 1761

Reasons For Allowance

The art of record, taken as a whole, does not teach the method of extruding and packaging a nut butter and jelly composite food portion in a vertical form and fill wrapping process wherein sugar syrup is added to the nut butter just prior to extruding which, as disclosed, provides a smooth-flowing mixture that remains stable throughout processing and packaging.

The newly cited references cited on the attached USPTO892 form are cited as art of interest.

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761